In the High Court of Uttaranchal, at Nainital.
Writ Petition No. 374/2004 (S/B)

1- National Institute of Hydrology Employees Welfare Forum through Its General Secretary Pawan Kumar, Jal Vigyan Bhawan, Roorkee, District Haridwar, Uttaranchal.

2- Sri Yatveer Singh, member, Executive Committee, National Institute of Hydrology Employees Welfare Forum, Jal Vigyan Bhawan, Roorkee, District Haridwar Uttaranchal ..... Petitioners.

Versus

1- Secretary, Ministry of Water Resources, Govt. of India, and Chairman, Governing Body of National Institute of Hydrology Shram Shakti Bhawan, Rafi Marg, New Delhi.

2- Director, National Institute of Hydrology Jal Vigyan Bhawan, Roorkee,' District Haridwar, Uttaranchal.

3- Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training, Division, IV, IInd Floor, Old JNU Campus, New Mahroli Road New Delhi ..... Respondents.

Sri S. Dhulia, learned Senior Advocate for the petitioners.
Sri Arvind Vashist, learned Asstt. S.G. and Smt. Anjali Bhargava, learned Standing Counsel for the respondents.

Coram: Hon'ble P.C. Verma, J.
Hon'ble B.C. Kandpal, J.

Dated: 28-6-2006

This writ petition has been filed by the Association known as 'National Institute of Hydrology Employees Welfare Forum' through its General Secretary Sri Pawan Kumar, Jal Vigyan Bhawan, Roorkee, District Haridwar, Uttaranchal and by one Sri Yatveer Singh, Member, Executive Committee, of the National Institute of Hydrology Employees Welfare

Forum, with a prayer to issue a writ of mandamus commanding the respondents to implement National Institute of Hydrology Service Condition Rules, 1981.

2- Brief facts of the case are that the National Institute of Hydrology, Roorkee, District Haridwar Uttaranchal ***(hereinafter referred as 'NIH')*** was established in the year 1978 by Government of India as an Autonomous Society. The Society is fully financed by the Government of India and is registered under the Societies Registration Act, 1860. The petitioner is a voluntary Forum of all the employees of 'NIH" and all the employees of the 'NIH" are members of the petitioner Forum. After establishment of the 'NIH' Byelaws, governing service conditions of the employees were framed by its Governing Body in the year 1980 and immediately thereafter the said Byelaws were approved by the Government of India on 5-11-1980 and subsequent amendments on 31-10-1981 and 22-1-1982.

3- NIH Working Rule No.2 contains the service conditions of the employees. Rule (4) of Working Rule No.2 deals with respect of the following matters, the rules and orders applicable to the Central Government employees from time to time shall apply to the employees of the Institute subject to such modifications as may be made by the Governing Body:-

(a) Medical Fitness.
(b) Leave and Holidays.
(c) Dearness Allowance, City Compensatory Allowance, House Rent Allowance, Children Education Allowance, Tuition Fee, Washing

Allowance, Overtime Allowance, Conveyance Allowance, Honorarium and Fees.

(d) Travelling Allowance, Daily Allowance and Leave Travel Concession.

(e) Conduct and Discipline.

(f) Termination of Service and Resignation.

(g) Seniority and confirmation.

(h) Loans and Advances to Employees.

(i) General Provident Fund.

(j) Contributory Provident Fund.

(k) Pension, Gratuity and Superannuation.

(l) Medical Aid.

(m) Central Government Employees Insurance Scheme, Interim Relief and Adhoc Bonus which may be sanctioned by the Central Government for its employees from time to time.

4- The petitioners have made prayer to grant them pensionery benefits as they are not liable for the pensionery benefits for the reason that deductions from their salary have not been made by the employer either under the Contributory Provident Fund-Cum-Gratuity Scheme or under the General Provident Fund-Cum-Pension-Cum- Gratuity Scheme, which is contained in Rule (6)(a) of Working Rule No.2. For convenience the entire Rule-(6) of Working Rule No.2 is reproduced hereunder:-

"(6)(a) Every employee of the Institute (other than a contract employee and work-charged staff) shall have an option to join one of the following two schemes:-

i)Contributory Provident Fund-Cum-Gratuity Scheme.

ii)General Provident Fund-Cum-Pension Cum Gratuity Scheme.

(b)Every option referred to in sub-clause (a) above shall be exercised in form-I attached to those rules within a period of three months from the date of appointment and any such option once exercised shall be final. If any employee does not exercise the option within this time limit, he shall be governed by Contributory Provident Fund-Cum-Gratuity Scheme.

Note:- 1. The option if any, exercised by an employee for the scheme of General Provident Fund-Cum-Pension-Cum-Gratuity Scheme under Rule 6(b) becomes effective only when the employee is declared permanent subsequently and until such time he will be governed by scheme number (1) viz, Contributory Provident Fund Cum Gratuity Scheme.

2. The adjustment of the amount of contributions initially made under Contributory Provident Fund Cum Gratuity Scheme shall be effected when an employee is brought to the scheme of General Provident Fund Cum Pension Cum Gratuity Scheme.

3. The existing employees shall have the option to join one of the above 2 schemes retrospectively from the date of their appointment and if they so opt, the arrears of subscriptions accumulated will be deducted in such number of installments as are admissible under the rules."

5- Undisputedly the petitioners are appointees after 26-6-1981,i.e. after the enforcement of these Rules. It is also not in dispute that the petitioners have not

opted either for scheme No.(i) of clause (a) of Rule-6 or scheme No.(ii) of clause (a) of Rule-6 within three months from the date of their appointment.

6- Sri Sudhansu Dhulia, learned Senior Advocate submitted on the basis of the averments made in the writ petition that there was no offer made by the employer to opt for either of the schemes, therefore, the petitioners were deprived of exercising their option as required by clause (b) & (b) of Rule-6. There is no averment in the writ petition that any of the member of the petitioners Association or the petitioner No.2 have either opted for any of the scheme contained in clause (a) of Rule-6.

7- Clause(b) of Rule-6 clearly provides that the option referred to in clause (a) of Rule-6 shall be exercised in form –I attached to these Rules within a period of three months from the date of appointment and any such option once exercised shall be final. If any employee does not exercise the option within this time limit, he shall be governed by Contributory Provident Fund-Cum-Gratuity scheme. Since there is no averment in the writ petition relating to option of the members of the Association under clause (a) of Rule-6, therefore in view of clause (b) of the said Rule-6 all the members of the petitioners Association and the petitioner No.2 shall be governed by the Contributory Provident Fund-Cum-Gratuity Scheme. It is misconceived to argue that they were not offered to exercise their option. It is presumed that they are well versed with the service conditions under which they have been appointed. The legal position is very clear. Thus all the members of petitioners Association and the petitioner No.2 are governed by the scheme of

Contributory Provident Fund-Cum-Gratuity Scheme, and they have not opted for either of the schemes contained in clause (a) of Rule-6 within three months from the date of their appointment.

8- In para-7 of the counter affidavit it has been specifically sated that on the basis of clause (b) the options from the employees of National Institute of Hydrology were invited vide O.M. No.6/15/81-NIH dated 30-07-1981 either for opting the CPF-Cum-Gratuity Scheme or the GPF-Cum-Pension-Cum-Gratuity Scheme. Some of the employees adopted the GPF-Cum-Pension-Gratuity Scheme.

9- Learned counsel for the petitioners submitted that the petitioners also submitted representation to the respondent/authorities for their placement under scheme (ii) of G.P.F.-Cum-Pension-Gratuity of clause (a) of Rule-6. The representation, if any, made by the petitioners is misconceived and is just to make out a case for getting the chapter opened for exercise of option.

10- Learned counsel for the petitioners also submits that apart from the appointees of 1981 there are appointees of 1982, 1983, and 1984 and of the subsequent years from whom no options have been invited. It is contrary to the averment made in para-7 of the counter affidavit. We have perused the writ petition and fund that there is no specific averment in the writ petition that who are the appointees of which year and whether they have been offered to exercise their options or not. However, a plain reading of the whole Rule-6 makes it clear that no offer is required to be given by the employer but it is the responsibility of

the employee, rather it is incumbent on the employee to exercise his option within three months from the date of his appointment in Form –I attached to the Rules, otherwise he shall be governed by the Contributory provident Fund-Cum- Gratuity Scheme.

11- For the reasons recorded above, we do not find any merit in this writ petition and the same is liable to be dismissed.

12- The writ petition is dismissed. No order as to costs.

(B.C.Kandpal, J.) **(P.C. Verma, J.)**

ISB